Supreme Court, U.S.
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No. 94-1594

In the
SUPREME COURT OF THE UNITED STATES

October Term 1994

MARGARET SIDOR, pro se, PETITIONER

v.

BARBARA JANIGA & EDWARD JANIGA
ADMINISTRATORS, ESTATE OF JULIA
NEBESNAK, Deceased, RESPONDENTS

ON PETITION FOR A WRI T OF CERTIORARI
TO THE SUPREME COURT OF NEW JERSEY

PETITION FOR A WRIT OF CERTIORARI

Margaret Sidor, pro se
Petitioner
11-43 Hoehn St. Apt. 1-B
Lodi, New Jersey 07644

QUESTIONS PRESENTED FOR REVIEW

1. Whether Petitioner as an heir under New Jersey statutes of intestate succession, with a statutory property interest in the real estate pursuant to devolution statute N.J.S.A. 3B:1-3 was deprived of her due process rights under the Fourteenth Amendment of the United States Constitution when both real properties were sold without a prior hearing on the need to do so by the court-appointed administrators, acting under color of authority of the State of New Jersey, particularly since it was not necessary to sell one property to pay expenses.

2. Did the New Jersey Supreme Court err in dismissing Petitioner's appeal for failure to present a substantial constitutional question?

QUESTIONS PRESENTED FOR REVIEW

3. Did the Appellate Division of the New Jersey Superior Court err in ruling that title to real estate may pass directly to the beneficiaries of an estate does not deprive the administrators of a decedent's estate of the power to sell that real estate per N.J.S.A. 3B:10-30 and N.J.S.A. 3B:14-23, which statutes do not provide for a prior hearing in accordance with due process? (App. infra 9a)

4. Did the Chancery Court err in ruling that even though title to the two real properties passed to the heirs automatically at the time of death, the Administrators had the power to sell per N.J.S.A. 3B:14-23, which does not provide for a prior hearing in accordance with due process? (App infra 12a)

QUESTIONS PRESENTED FOR REVIEW

5. Are New Jersey statutes 3B:10-30 and 3B:14-23, as applied to the instant case, unconstitutional since they do not provide for a prior hearing in accordance with due process mandated by the Fourteenth Amendment of the United States Constitution with respect to the sale of real estate?

PARTIES

The parties to this proceeding are the Petitioner (defendant below) Margaret Sidor and Respondents (plaintiffs below) Barbara Janiga and Edward Janiga, Administrators.

In the New Jersey Appellate Court and the New Jersey Supreme Court, Petitioner served a copy of all papers on the Attorney General of New Jersey, inasmuch as the constitutionality of New Jersey statutes 3B:10-30 and 3B:14-23 was being challenged since they were stated to authorize the sale of real estate by the administrators without a hearing of any kind. However, the New Jersey Attorney General never filed a response in either court and thus were not a party to the appeal.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i.
PARTIES	iv.
TABLE OF AUTHORITIES	vii.
OPINIONS BELOW	1,2
JURISDICTION	3-5
STATUTORY PROVISIONS INVOLVED	6,7
STATEMENT	8-16
REASONS FOR GRANTING THE PETITION The Decisions of the courts below are erroneous	17
A. That the Administrators, whose appointment was mandated by N.J. statute, were acting under color of authority of the State of New Jersey is supported by a decision of the U. S. Supreme Court	17
B. Petitioner established she had a vested statutory property interest in the real estate protected by the due process clause of the Fourteenth Amendment of the U.S. Constitution	20
C. New Jersey Statutes 3B:10-30 and 3B:14-23, which the Chancery and Appellate Courts stated authorized the sale of the real estate without a hearing should be declared unconstitutional	24

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i.
PARTIES	iv.
TABLE OF AUTHORITIES	vii.
OPINIONS BELOW	1,2
JURISDICTION	3-5
STATUTORY PROVISIONS INVOLVED	6,7
STATEMENT	8-16
REASONS FOR GRANTING THE PETITION The Decisions of the courts below are erroneous	17
A. That the Administrators, whose appointment was mandated by N.J. statute, were acting under color of authority of the State of New Jersey is supported by a decision of the U. S. Supreme Court	17
B. Petitioner established she had a vested statutory property interest in the real estate protected by the due process clause of the Fourteenth Amendment of the U.S. Constitution	20
C. New Jersey Statutes 3B:10-30 and 3B:14-23, which the Chancery and Appellate Courts stated authorized the sale of the real estate without a hearing should be declared unconstitutional	24

TABLE OF CONTENTS

	Page
D. There are constitutional issues of major importance involved and the N.J. Supreme Court erred in dismissing the appeal and thus denying Petitioner access to the courts	27
CONCLUSION	28

APPENDIX

Supreme Court of New Jersey Order Denying Petitioner's Motion for Reconsideration of her Appeal Entered December 13, 1994	1a
Supreme Court of New Jersey Order Dismissing Petitioner's Appeal for failure to present a substantial Constitutional Question - Entered 9/21/94	2a
Appellate Division Superior Court of New Jersey Order affirming decision of Chancery Court granting Administrators' Motion for Summary Judgment-Entered 3/17/94	3a-9a
Chancery Division-Bergen County Superior Court of New Jersey Order for Summary Judgment in favor of Administrators Entered April 28, 1993	10a-12a

TABLE OF AUTHORITIES

Cases	Page
Logan v. Zimmerman Brush Co. 455 U.S. 422 (1982) 430,431,434	22,23, 24
Tulsa Professional Collection Services v. Pope, 485 U.S. 478 (1988) 486, 487	19
Egner v. Egner, 183 N.J. Super 326 (1982)	20
Historic Smithville Dev. v. Chelsea Title, 184 N.J. Super 282 and 190 N.J. Super 567 ((1981)	21
Statutes	
28 USC Sec. 1257	3
N.J.S.A. 3B:1-3	i, 4,8,9, 14, 20
N.J.S.A. 3B:10-2	8, 18, 19
N.J.S.A. 3B:10-4	8, 18,19
N.J.S.A. 3B:10-30	5, 6, 11, 13,15,21,24, 25,9a
N.J.S.A. 3B:14-23	5,6,12,13,15, 21,24,25,26, 9a,12a
N.J. Constitution, Article 6, Sec. 5 Par 1(a)	14,16,27

IN THE SUPREME COURT OF THE UNITED STATES

October Term 1994

MARGARET SIDOR, pro se, Petitioner

v.

BARBARA JANIGA and EDWARD JANIGA ADMINIS T RATORS, ESTATE OF JULIA NEBESNAK, Respondents

---

PETITION FOR A WRIT OF CERTIORARI TO THE NEW JERSEY SUPREME COURT

Margaret Sidor, pro se, respectfully petitions for a writ of certiorari to review the orders of the New Jersey Supreme Court in this case.

OPINIONS BELOW

The Opinions and Orders of the courts below are unreported. They are:

1. SUPREME COURT OF NEW JERSEY
   Order entered December 13, 1994, denying Petitioner's Motion for Reconsideration of her Appeal. (App. infra 1a)

OPINIONS BELOW (Cont'd.)

2. SUPREME COURT OF NEW JERSEY Order entered September 21, 1994, dismissing the appeal for failure to present a Substantial Constitutional Question. (App. 2a)

3. APPELLATE DIVISION, Superior Court of New Jersey - order entered March 17, 1994, affirming the order of the Chancery Court granting Administrators-Respondents' Motion for Summary Judgment. (App infra 3a-9a)

4. CHANCERY DIVISION, Superior Court of New Jersey - Order entered April 28, 1993, granting Administrators-Respondents' Motion for Summary Judgment. (App. 10a-12a)

JURISDICTION

The j urisdiction of this Court is invoked under 28 USC Sec. 1257 as revised in the Act of 6/27/88, 102 Stat. 662 which reads as follows:

> Sec. 1257 State Courts; certiorari
>
> (a) Final judgment or decrees rendered by the highest court of a State in which a decision could be had; may be reviewed by the Supreme Court by writ of certiorari where the validity of a statute of any state is drawn in question on the ground of being repugnant to the Constitution...or where any title, right, privilege or immunity is specially set up or claimed under the Constitution...

The orders of the Supreme Court of New Jersey to be reviewed are:

- Order entered December 13, 1994 denying Petitioners Motion for Reconsideration of her appeal. (App. infra 1a)

- Order entered September 21, 1994 dismissing Petitioner's Appeal for failure to present a sub-

stantial constitutional question. (App. infra. 2a)

The grounds on which jurisdiction of this Court is invoked are as follows:

As an heir of the intestate decedent under N.J. statutes of intestate succession, Petitioner had a statu t ory property interest in two separate real properties pursuant to devolution statute N.J.S.A. 3B:1-3, which provides that the real and personal proper ty devolves...in the absence of testamentary disposition to the heirs. As discussed below, this is supported by case law which states that real property passes directly to the heirs immediately at death. (infra. p. 20,21)

The court appointed administrators, acting under color of authority of the State of New Jersey, sold both properties without a hearing in accordance with due process.

The New Jersey Chancery and Appellate Courts ruled that even though the two real properties passed to the heirs automatically at the time of death, the administrators had the power to sell both properties per N.J.S.A. 3B:14-23 and 3B:10-30 (App. infra 9a, 12a).

Petitioner contended in the lower courts that she had been deprived of her properties without a hearing, in violation of her due process rights mandated by the Fourteenth Amendment of the United States Constitution and that the aforesaid statutes should be declared unconstitutional since they do not provide for such a hearing.

STATUTES

The statutes being challenged in this case are as follows:

1. N.J.S.A. 3B:10-30 - Power over title to Property

> Until termination of his appointment a personal representative has the same power over the title to property of the estate that an absolute owner would have, in trust, however, for the benefit of the creditors and others interested in the estate. This power may be exercised without notice, hearing, or order of the court. (Emph. added)
>
> L. 1981, c. 405 eff. May 1, 1982

2. N.J.S.A. 3B:14-23 provides with respect to real estate:

> "In the absence of contrary or limiting provisions in the judgment or order appointing a fiduciary, in the will, deed or other instrument or in a subsequent court judgment or order, every fiduciary shall, in the exercise of good faith and reasonable discretion, have the power:
>
> ***
>
> e. With respect to any property or any interest therein owned by an estate or trust, including any real property belonging to the fiduciary's

decedent at death, except where the property or any interest therein is specifically disposed of;

(1) To take possession of and manage the property and to collect the rents therefrom and pay taxes, mortgage interest and other charges against the property;

(2) To sell the property at public or private sale, and on terms as in the opinion of the fiduciary shall be most advantageous to those interested therein;

***

u. To acquire or dispose of an asset, including real or personal property in this or another State, for cash or on credit, at public or private sale, and to manage, develop, improve, exchange, partition, change the character of, or abandon an estate asset;

***

w. The powers set forth in this section are in addition to any other powers granted by law, and by a will, deed or other instrument.

L. 1981, c. 405, eff. May 1, 1982.

The above-quoted statutes do not provide for a hearing of any kind.

STATEMENT OF THE CASE

This matter concerns the estate of Julia Nebesnak, who died intestate on January 4, 1991. Under New Jersey laws of intestate succession, Petitioner, a neice, was one of the heirs.

The appointment of an administrator was mandated by N.J. Statutes 3B:10-2 and 3B:10-4 because the assets exceeded $5,000. Barbara and Edward Janiga were appointed administrators by the New Jersey Surrogate Court and thus were acting under color of authority of the State of New Jersey.

The decedent's primary assets were two separate pieces of real estate. Devolution statute N.J.S.A. 3B:1-3 provides that

> the real and personal property devolves...in the absence of testamentary disposition to the heirs...

Therefore, Petitioner, as an heir, had a vested statutory property interest

in both real properties.

One year after they were appointed, the administrators submitted an account which showed that two months after their appointment, they sold both properties without a prior hearing on the need to do so. No prior inventory or statement of claims had been submitted. No appraisal had been made by a qualified appraiser. There was no advertising to obtain the best price.

The account also showed that it was not necessary to sell both properties to pay expenses. One property should never have come into their hands. It devolved to the heirs immediately at death in accordance with N.J.S. 3B:1-3, supra.

Petitioner filed exceptions to the account with the Chancery Court, protesting the irresponsible handling of

the real estate, stating she was wrongfully deprived of her vested statutory property interest in the real estate without a prior hearing, in violation of her due process rights mandated by the Fourteenth Amendment of the United States Co nstitution, by the Administrators who were acting under color of authority of the State of New Jersey. She requested that sanctions be imposed on the administrators and that since it was not necessary to sell one property to pay expenses, it had been wrongfully seized and sold and should not be included in corpus on which commissions are computed. The matter was set for trial.

Prior to trial, respondent administrators filed a Motion for Summary Judgment stating they were

authorized to sell the real estate by N.J.S.A. 3B:10-30 which provides:

> Until termination of his appointment, a personal representative has the same power over title to the property of the estate that an absolute owner would have, in trust, however, for the benefit of creditors and others interested in the estate. This power may be exercised without notice, hearing or order of the court. (Emph. added)

Petitioner filed an Answer in opposition, stating that N.J.S.A. 3B:10-30 was unconstitutional since it did not provide for a hearing and reiterating that she had been deprived of her property without due process of law mandated by the Fourteenth Amendment, by the Administrators who were acting under color of authority of the State of N.J.; and also filed a Cross Motion for Summary Judgment in her favor. The Chancery Court entered an order for Summary Judgment in favor of the Administrators

on April 28, 1993, agreeing with Petitioner's contention that:

> ...title to the two real properties passed to the heirs automatically at the time of death...(App. infra 12a)

but that the Administrators

> had the power to sell per N.J.S.A. 3B:14-23 (App. infra. 12a)

This statute 3B:14-23 also does not provide for a hearing of any kind prior to the sale of real estate, as related supra, p. 7 and 8.

Petitioner then filed an appeal to the Superior Court of New Jersey, Appellate Division, reiterating her claim that the real estate was wrongfully seized and sold without a prior hearing on the need to do so, in violation of her due process rights guaranteed by the Fourteenth Amendment of the U.S. Constitution, by the Administrators acting under color of authority of the State of New Jersey, and again request-

ing that sanctions be imposed and that since it was not necessary to sell one property, it should never have come into the hands of the administrators and should not be included in corpus on which commissions are computed. Petitioner further asked the Appellate Court to declare New Jersey statutes 3B:10-30 and 3B:14-23 unconstitutional since they do not provide for a hearing with respect to the sale of real estate.

The Appellate Court affirmed the Chancery Court's Order for Summary Judgment on March 17, 1994 stating (App. infra. 9a):

> That title to real estate may pass directly to the beneficiaries of an estate does not deprive the administra tor of a decedent's estate of the power to sell that real estate as part of their administration of that estate (citing) N.J.S.A. 3B:10-30, N.J.S.A. 3B:14-23...

Petitioner then filed an appeal to the New Jersey Supreme Court pursuant to Article 6, Section 5, Paragraph 1(a) of the New Jersey Constitution, which provides:

> Appeals may be taken to the Supreme Court (a) in causes determined by the Appellate Division of the Superior Court involving a question arising under the Constitution of the United States or this State.

In her brief, Petitioner reiterated her claims:

- that she has a vested statutory property interest in the real estate per N.J.S.A. 3B:1-3.
- that it had been wrongfully seized and sold without a prior hearing on the need to do so, in violation of her due process rights mandated by the Fourteenth Amendment of the U.S. Constitution.
- that the Administrators were acting under color of authority of

the State of New Jersey and sanctions should be imposed

- that one property should never have come into their hands since it was not needed to pay expenses and should not be included in corpus on which commissions are computed.
- that New Jersey statutes 3B:10-30 and 3B:14-23, which the Chancery and Appellate Courts stated authorized the sale of the real estate should be declared unconstitutional since they do not provide for a prior hearing in accordance with due process as required by the Fourteenth Amendment of the U.S. Constitution.

Respondent Administrators filed a Motion to Dismiss the Appeal. The N.J. Supreme Court filed an order on September 21, 1994, granting the motion to dismiss: (App. infra. 2a):

"for failure of appellant to present a substantial constitutional question."

Petitioner filed a Motion for Reconsideration since there certainly were substantial constitutional questions, as related above, and the appeal was authorized by Article 6, Sec. 5, Par. 1(a) of the New Jersey Constitution, since it involved a question "arising under the Constitution of the United S tates or this State." On Dec. 13, 1994, the N.J. Supreme Court entered an order denying the Motion for Reconsideration. (App. infra 1a)

REASONS FOR GRANTING THE PETITION

The decisions of the courts below are erroneous and in violation of due process rights mandated by the Fourteenth Amendment of the United States Constitution. The questions presented are important not only because they affect the rights of Petitioner but should be decided also to prevent future harm to o thers who similarly inherit property in New Jersey.

A. That the Administrators, whose appointment was mandated by N.J. statute, were acting under color of authority of the State of New Jersey is supported by a decision of the United States Supreme Court

Petitioner argued in the N.J. Chancery, Appellate and Supreme Courts that the Administrators-Respondents were acting under color of authority

of the State of New Jersey when they seized and sold both real properties without a prior hearing on the need to do so, inasmuch as their appointment by the Surrogate Court was mandated by N.J.S.A. 3B:10-2 and 3B:10-4 because the assets exceeded $5,000.

N.J.S.A. 3B:10-4 provides:

> "When heirs entitled to assets without administration
>
> Where the total value of the real and personal assets of the estate of an intestate will not exceed $5,000 and the intestate leaves no surviving spouse, and one of his heirs shall have obtained the consent in writing of the remaining heirs, if any, and shall have executed before the surrogate of the county where the intestate resided at his death...or before the Superior Court, the affidavit herein provided for, shall be entitled to receive the assets of the intestate for the benefit of all the heirs and creditors without administration or entering into a bond...."
> (emph. added)

N.J.S.A. 3B:10-2 provides:

> If any person dies intestate, administration of the intestate's estate shall be granted ...if there be no surviving spouse, then to the remain-

> ing heirs of the intestate,... if they or any of them will accept the administration, and if none of them will accept the administration, then to any other person as will accept the administration...

In this regard, it has been held by the United States Supreme Court in Tulsa Professional Collection Services v. Pope, 485 US 478, 486-487; 108 S. Ct. 1340 (1988):

> ***the Probate Court's involvement in appointing an executor is necessary to activate the time bar and thus there was sufficient state action to give rise to due process requirements....

Here, similarly, the Surrogate Court's involvement in appointing the administrators as mandated by N.J.S.A. 3B:10-2 and 3B:10-4 to activate the administration of the estate indicates there was State action to give rise to due process requirements of the Fourteenth Amendment of the United States Constitution.

B. Petitioner established she had a vested statutory property interest in the real estate protected by the due process clause of the Fourteenth Amendment of the United States Constitution

Petitioner argued at the outset in the New Jersey Chancery Court (in her exceptions to the account and Answer in Opposition to the Motion for Summary Judgment), the Appellate Division and the New Jersey Supreme Court that N.J.S.A. 3B:1-3 provides that "the real and personal property devolves...in the absence of testamentary disposition to the heirs..." Therefore, Petitioner had a vested statutory property interest in the real estate. In this regard, she pointed out, that the courts have held that real property passes directly to the heirs immediately upon death. Egner v. Egner, 183 N.J. Super 326, 328 (1982):

> "It is settled law that title to real property vests in the heirs or devisees automatically and immediately upon death..."

and furthe r:

> "truly automatic transfer of title to real property occurs only by survivorship in a joint tenancy and through intestate succession." Historic Smithville Dev. v. Chelsea Title, 184 N.J. Super 282, 291 and 190 Super 567 (1981)

In the instant case, the Chancery Court in its order for Summary Judgment entered on April 28, 1993 agreed that:

> "...title to the two(2) real properties passed to the heirs automatically at the time of death.. (App. infra. 12a)

and the Appellate Court in its Judgment entered on March 17, 1994, stated the real estate passed directly to the beneficiaries. (App. infra 9a)

However, bo th courts erroneously stated that the N.J.S.A. 3B:10-30 and 3B:14-23 (App. infra. 9a, 12a) authorized the administra tors-respondents to seize and sell both properties without a prior hearing on the need to do so in accordance with due process. This is contradic t ory -- and Petitioner

contended that since she had a statutory property interest in the real estate and since both statutes do not provide for a hearing before the properties were seized and sold, the statutes are unconstitutional and repugnant to the due process requirements of the Fourteenth Amendment of the United States Constitution.

In this regard, the United States Supreme Court, in determining whether a claim is a constitutionally protected one, has stated in Logan v. Zimmerman Brush Co., 455 U.S. 422, 430, 431 (1982):

> The hallmark of property, the Court has emphasized, is an individual entitlement grounded in state law which cannot be removed except for cause...Once that characteristic is found, the types of interests protected as "property" are varied and, often as not, intangible, relating to the whole domain of social and economic fact."

The Court further stated in Logan,

supra, p. 434:

> To put it as plainly as possible, the State may not finally destroy a property interest without first giving the putative owner an opportunity to present his claim of entitlement.

In the present case, there was no hearing of any kind to demonstrate the need to sell the properties. The account later revealed that it was not necessary to sell one property to pay expenses and it should never have come into the hands of the administrators. No appraisal was made of the properties and they were not advertised to obtain the best price. Petitioner has been wrongfully deprived of her property, which could have been avoided had there been a prior hearing.

C. New Jersey Statutes 3B:10-30 and 3B:14-23, which the Chancery and Appellate Courts stated authorized the sale of the real estate without a hearing should be declared unconstitutional

In the present case, the Chancery and Appellate Courts stated in their Judgments that even though title to the real estate passed to the heirs immediately at death, the Adminis tra-tors-Respondents were authorized to sell both properties without a hearing by N.J.S.A. 3B:10-30 and 3B:14-23.

Neither statute provides for a hearing of any kind, in accordance with due process, and should be declared unconstitutional. As stated in Logan, supra, p. 434:

> To put it as plainly as possible, the State may not finally destroy a property interest without first giving the putative owner an opportunity to present his claim of entitlement.

As previously stated herein, it wasn't even necessary to sell one property and it was wrongfully seized and sold.

The statutes in question read as follows.

N.J.S.A. 3B:10-30 provides:

> Until termination of his appointment, a personal representative has the same power over the title to property of the estate that an absolute owner would have, in trust however, for the benefit of the creditors and others interested in the estate. This power may be exercised without notice, hearing, or order of the court. (Emph. added)

N.J.S.A. 3B:14-23 provides with respect to real estate:

> In the absence of contrary or limiting provisions in the judgment or order appointing a fiduciary, in the will, deed or other instrument or in a subsequent court judgment or order, every fiduciary shall, in the exercise of good faith and reasonable discretion, have the power:
>
> ***

3B:14-23 (cont'd)

e. With respect to any property or any interest therein owned by an estate or trust, including any real property belonging to the fiduciary's decedent at death, except where the property or any interest therein is specifically disposed of:

(1) To take possession of and manage the property and to collect the rents therefrom, and pay taxes, mortgage interest and other charges against the property;

(2) To sell the property at public or private sale, and on terms as in the opinion of the fiduciary shall be most advantageous to those interested therein.

***

u. To acquire or dispose of an asset, including real or personal property in this or another State, for cash or on credit, at public or private sale, and to manage, develop, improve, exchange, partition, change the character of, or abandon an estate asset;

***

w. The powers set forth in this section are in addition to any other powers granted by law, and by a will, deed or other instrument.

D. There are constitutional issues of major importance involved and the N.J. Supreme Court erred in dismissing the appeal and thus denying Petitioner access to the courts.

Petitioner filed an appeal to the N.J. Supreme Court pursuant to Article 6, Section 5, Paragraph 1(a) of the New Jersey Constitution, which provides:

> Appeals may be taken to the Supreme Court (a) in causes determined by the Appellate Division of the Superior Court involving a question arising under the Constitution of the United States or this State.

In her brief, Petitioner related all of the arguments discussed herein, including the decisions of the United States Supreme Court, supra, p. 15, 16, 19-24.

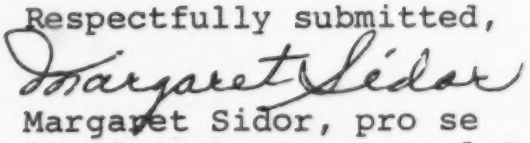
The N.J. Supreme Court improperly dismissed the appeal:

> "for failure of appellant to present a substantial constitutional question."

CONCLUSION

For the foregoing reasons, it is respectfully requested that the petition for a writ of certiorari be granted.

Respectfully submitted,



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March 24, 1995

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SUPREME COURT OF NEW JERSEY
M-438 September Term 1994
38,583

IN THE MATTER OF THE ESTATE

OF JULIA NEBESNAK, DECEASED

ORDER

Filed 12/13/94

This matter having been duly presented to the Court, it is ORDERED that the motion of Margaret Sidor for reconsideration of the appeal is denied.

WITNESS, the Honorable Robert N. Wilentz, Chief Justice, at Trenton, this 9th day of December, 1994.

s/Steven Townsend
CLERK OF THE SUPREME COURT

SUPREME COURT OF NEW JERSEY
M-136 September Term 1994
38,583

IN THE MATTER OF THE ESTATE

OF JULIA NEBESNAK, DECEASED

(BARBARA JANIGA, et al.,
Movants)

ORDER

Filed Sep. 21, 1994

This matter having been duly presented to the Court, it is ORDERED that the motion to dismiss is granted for failure of appellant to present a substantial constitutional question within the requirements of Rule 2:2-1(a)(1).

WITNESS, the Honorable Robert N. Wilentz, Chief Justice, at Trenton, this 20th day of September, 1994.

s/ Stephen Townsend
CLERK OF THE SUPREME COURT

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE COMMITTEE ON OPINIONS

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-4963-92T2

In the Matter of the Estate of
JULIA NEBESNAK, Deceased

Submitted: February 23, 1994
Decided: March 17, 1994

Before Judges Michels and Wefing

On appeal from the Superior Court, Chancery Division, Probate Part, Bergen County

Margaret Sidor, appellant, submitted a brief pro se.

Jeffer, Hopkinson, Vogel, Coom ber & Peiffer, attorneys for respondents (Peter E. Riccobene, on the brief).

PER CURIUM

Margaret Sidor appeals from orders entered in the Chancery Division, Probate Part, which denied certain of her exceptions to the accounting of Barbara Janiga and Edward Janiga as administra-

tors of the Estate of Julia Nebesnak, granted the administrators summary judgment, awarded commissions to the Janigas and counsel fees to their attorneys and denied Ms. Sidor's motion to strike a certain letter from the record. On appeal, Ms. Sidor raises the following issues:

POINT I PLAINTIFF-RESPONDENT ADMINISTRATORS WERE NOT ENTITLED AS A MATTER OF LAW TO BE GRANTED THEIR MOTION FOR SUMMARY JUDGMENT. THE DECISION SHOULD BE REVERSED AND APPELLANT'S CROSS MOTION FOR SUMMARY JUDGMENT SHOULD BE GRANTED

POINT II THE REAL ESTATE OF THE DECEDENT PASSED DIRECTLY TO THE HEIRS IMMEDIATELY UPON DEATH AND APPELLANT BECAME A PARTIAL OWNER OF BOTH PROPERTIES IMMEDIATELY UPON DEATH.

POINT III THE ADMINISTRATORS, ACTING UNDER COLOR OF AUTHORITY OF THE STATE OF NEW JERSEY IMPROPERLY CONFISCATED THE REAL ESTATE AND SOLD BOTH PROPERTIES WITHOUT A PRIOR HEARING ON THE NEED TO DO SO WITH FULL DISCLOSURE OF INVENTORY, CLAIMS, DEBTS, IN VIOLATION OF APPELLANT'S DUE PROCESS

RIGHTS GUARANTEED BY THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION. SANCTIONS SHOULD BE IMPOSED.

POINT IV SINCE DEBTS AND EXPENSES OF THE ESTATE TOTALED $45,000, IT WAS NOT NECESSARY TO SELL BOTH PROPERTIES TO PAY THIS AMOUNT. THEREFORE IF COMMISSIONS ARE PAID, IT SHOULD BE BASED ON CORPUS CONSISTING OF ONE PROPERTY ONLY.

POINT V IF NEW JERSEY STATUTES 3B:10-30 AND 3B:14-23 OR ANY OTHER STATUTES AUTHORIZED THE SALE OF THE DECEDENT'S REAL ESTATE WITHOUT A PRIOR HEARING IN ACCORDANCE WITH DUE PROCESS AND ORDER OF THE COURT, THEN THE STATUTES ARE VIOLATIVE OF DUE PROCESS RIGHTS GUARANTEED BY THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION AND ARE THEREFORE UNCONSTITUTIONAL AND THEY SHOULD BE SO DECLARED.

POINT VI THE AWARD OF $6,501 IN FEES IN THE JUDGMENT ENTERED ON SEPTEMBER 28, 1992 (1A) AND $2,500 FEES AWARDED IN THE ORDER ENTERED ON JUNE 30, 1993 (7A) ARE AN ABUSE OF DISCRETION IN VIEW OF THE RECKLESS HANDLING OF THIS ESTATE BY THESE ATTORNEYS RESULTING IN LITIGATION AND UNNECESSARY WORK THEY CREATED AND SHOULD BE SET ASIDE. IF THESE FEES ARE AWARDED, THE NEW JERSEY INHERITANCE

TAX RETURN SHOULD BE AMENDED TO SHOW THESE AMOUNTS AS DEDUCTIBLE EXPENSES INSTEAD OF THE $2500 ESTIMATED FEE SHOWN THEREON (134A to 137A AND 204A).

POINT VII THE ORDER DENYING APPELLANT'S MOTION TO STRIKE ADMINISTRATORS' LETTER OF SEPTEMBER 16, 1992 WHICH WAS FILED IN RESPONSE TO HER EXCEPTIONS SHOULD BE STRICKEN AND REMOVED FROM THE RECORD AND FILE BECAUSE A COPY WAS NOT SENT TO APPELLANT AND IS A VIOLATION OF HER DUE PROCESS RIGHTS.

POINT VIII SINCE THE ADMINISTRATORS-RESPONDENTS ALLEGE THERE WAS NO CASH IN THIS ESTATE AND THE ONLY ASSETS OF THE DECEDENT WERE TWO PIECES OF REAL ESTATE, IT IS IS CONCEIVABLE THERE ARE CREDITORS WHO ARE NOT AWARE OF HER DEATH. A NOTICE TO CREDITORS SHOULD BE PUBLISHED, AS REQUESTED IN APPELLANT'S EXCEPTIONS, TO AVOID FUTURE LITIGATION AGAINST THE HEIRS.

POINT IX AS REQUESTED IN APPELLANT'S EXCEPTION NO. EIGHT IN HER AMENDMENT TO THE EXCEPTIONS, AN ADVERTISEMENT SHOULD BE PLACED IN THE NEW JERSEY LAW JOURNAL TO DETERMINE IF ANY ATTORNEY EVER PREPARED A WILL FOR THE DECEDENT.

Ms. Sidor has, in addition, filed a reply brief in which she raises the following issues:

POINT I — CONTRARY TO PLAINTIFF-RESPONDENT'S CONTENTION IN POINT IV (PB 12), DEFENDANT-APPELLANT BECAME AN OWNER OF DECEDENT'S REAL ESTATE IMMEDIATELY AT DEATH, AS THE LOWER COURT PROPERLY DETERMINED, AND THIS STATUTORY PROPERTY RIGHT WAS PROTECTED BY THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT.

POINT II — THE TRIAL JUDGE CORRECTLY DETERMINED THAT THE TWO REAL PROPERTIES PASSED TO THE HEIRS IMMEDIATELY AT DEATH. THEREFORE, SINCE DUE PROCESS REQUIRED A PRIOR HEARING BEFORE THEY COULD BE SOLD AND SINCE IT WAS NOT NECESSARY TO SELL BOTH PROPERTIES, THE ADMINISTRATORS WERE NOT ENTITLED TO SUMMARY JUDGMENT AS A MATTER OF LAW.

POINT III — SINCE THE LOWER COURT DETERMINED THAT THE TWO REAL PROPERTIES PASSED TO THE HEIRS IMMEDIATELY AT DEATH AND SINCE IT WAS NOT NECESSARY TO SELL BOTH PROPERTIES TO PAY $45,000 EXPENSES, IF COMMISSIONS ARE PAID IT SHOULD BE BASED ON CORPUS REPRESENTING

PROCEEDS OF SALE OF ONE PROPERTY ONLY.

POINT IV THE DECEDENT'S ONLY ASSETS WERE TWO REAL PROPERTIES WHICH WERE SOLD FOR A TOTAL OF $125,000 AND IN VIEW OF THE IMPROPER SEIZURE AND SALE OF BOTH PROPERTIES BY THE ATTORNEYS WITHOUT A PRIOR HEARING IN VIOLATION OF DUE PROCESS RIGHTS AND THE RESULTING LITIGATION THEY CREATED, IT WAS AN ABUSE OF DISCRETION TO REWARD THE ATTORNEYS FOR THEIR IRRESPONSIBLE ACTS WITH $6,501 IN FEES (DA7). FEES SHOULD BE REDUCED TO $2500 AS THE ATTORNEYS THEMSELVES REPORTED IN THE NEW JERSEY INHERITANCE TAX RETURN.

POINT V APPELLANT NEVER ASKED THAT A NOTICE TO CREDITORS BE PUBLISHED IN THE NEW JERSEY LAW JOURNAL AS STATED IN PLAINTIFFS-RESPONDENTS' BRIEF (P69). IT SHOULD BE PUBLISHED IN A LOCAL NEWSPAPER WITH A WIDE CIRCULATION WHERE CREDITORS WOULD SEE IT.

POINT VI PLAINTIFFS-RESPONDENTS ADMINISTRATORS' LETTER OF SEPTEMBER 16, 1992, WHICH WAS NEVER SENT TO APPELLANT, SHOULD BE STRICKEN BECAUSE IT DEPRIVED APPELLANT OF HER DUE PROCESS RIGHT TO PREPARE A RESPONSE TO IT FOR THE HEARING, PARTICULARLY SINCE A COPY OF THE LETTER WAS SENT TO THE COURT FOR

ITS CONSIDERATION IN
RENDERING ITS DECISION
ON THE EXCEPTIONS.

We are fully satisfied, after a careful review of the arguments and the record in this matter, that all of these issues are without merit. R. 2:11-3(3)(1)(E). The decision of the trial court is supported by ample evidence within the record, and thus the trial court did not err in allowing the accounting or in awarding commissions and counsel fees. That title to real estate may pass directly to the beneficiaries of an estate does not deprive the administrators of a decedent's estate of the power to sell that real estate as part of their administration of that estate. N.J.S.A. 3B:10-30; N.J.S.A. 3B:14-23. Further, appellant has failed to produce any credible evidence that the real estate was sold for insufficient consideration.

Affirmed.

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SUPERIOR COURT OF N.J.
CHANCERY DIVISION
BERGEN COUNTY

IN THE MATTER OF THE ESTATE OF JULIA NEBESNAK, Deceased

Docket No.
Civil Action

ORDER FOR SUMMARY JUDGMENT

This matter having been presented to the Court by motion of Jeffer Hopkinson Vogel Coomber & Peiffer, attorneys for plaintiff, Barbara Janiga and Edward Janiga, Administrators of the estate of Julia Nebesnak, deceased, upon notice to defendants, and the court having considered the papers filed and oral argument and for other good cause shown:

It is on this 28th day of April, 1993,

ORDERED, that summary judgment be

and is hereby entered:

A. Allowing administrator's corpus commissions of $7,567.00 ($7,567.00 having been paid on account);

B. Allowing administrator's income commissions of $119.00 ($0.00 having been paid on account);

AND IT IS FURTHER ORDERED, that a copy of this Order certified by the attorney for the plaintiffs to be a true copy be served upon each of the above-named persons personally or by mailing the same to his last known address, certified mail, return receipt requested, within 7 days from the date of this Order.

Defendant Margaret Sidor's cross-motion for summary judgment is denied.

s/ Kevin M. O'Halloran,
P.J. Ch.

___Unopposed

_X_ Opposed

Reasons: The administrators are entitled to a 5% corpus commission by

statute. Even though title to the two (2) real properties passed to the heirs automatically at the time of death, they "came into the hands" of the administrators who took possession, prepared them for sale, and sold them without a broker. They should therefore be included in corpus.

The administrators are allowed the 1% discretionary commission. They did most of the things administrators usually do, spent 155 hours and sold the real estate without a broker.

They had the power to sell per N.J.S.A. 3B:14-23. N.J.S.A. 3B:22-22 deals with rights of creditors and is irrelevant here.

The taking of corpus commissions prior to the accounting was a procedural error. It did not result in prejudice to anyone and the administrators will not be surcharged.

s/ Kevin M. O'Halloran
P.J. Ch.